

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case No: 6:18-cr-190-Orl-41TBS

KENEON FITZROY ISAAC

ORDER

THIS CAUSE is before the Court on Defendant's Motion to Suppress (Doc. 35), to which the Government filed a Response (Doc. 40). An evidentiary hearing was held on November 26, 2018. (*See* Min. Entry, Doc. 47). As set forth below, the motion will be denied.

I. FINDINGS OF FACT

Around 11:45 in the evening on March 15, 2018, Cocoa Beach Police Department Detective Ronald Betts arrested Defendant Keneon Fitzroy Isaac for lewd or lascivious battery. Detective Betts made the arrest after receiving a tip that Defendant had sexually molested a child, seeing pictures of a cellphone displaying photos depicting the alleged molestation, and interviewing the alleged victim who identified Defendant as her molester and who provided Detective Betts the Defendant's phone number. At the time of the arrest, the victim, the victim's mother, and the victim's sister were living in an RV rented for them by Defendant. Detective Betts received the victim's mother's permission to search the RV and called Defendant and asked him to come to the RV to lock it. The RV was parked behind a BP gas station in a high crime area. When Defendant arrived at the scene of the arrest, he was driving a Mercedes. Defendant parked the Mercedes in front of a semi-truck that was also parked in the lot behind the gas station. When Defendant exited the vehicle, Detective Betts called Defendant's cellphone, which rang. Defendant was arrested, and a search incident to arrest of Defendant's person resulted in a seizure of that cellphone and a receipt for the motel where the alleged molestation occurred.

After Defendant was arrested, secured, and placed in the back of a patrol car, Detective Betts made the decision to impound the Mercedes. The decision to impound the Mercedes was made due to the late hour, Detective Betts' knowledge of the area being generally high in crime, the lack of available officers to watch the vehicle after Detective Betts left the scene, and because the driver of the truck the Mercedes was parked in front of informed the officers at the scene that he needed to make a delivery and requested the Mercedes be moved so he could exit the parking lot. Defendant was not given the option to call someone to move the vehicle. Detective Betts called a tow truck driver and then performed an inventory search of the Mercedes. The inventory search revealed an additional cellphone which matched the cellphone depicted in the photographs seen by Detective Betts prior to the arrest. The cellphone was noted on the property report and placed back in the vehicle in the position in which it was discovered. The vehicle was towed, and the next day Detective Betts obtained a search warrant to search the Mercedes and seize the cellphone. Additional warrants were later obtained to search the data on both cellphones.

II. CONCLUSIONS OF LAW

Defendant asserts that the search of his vehicle was an illegal warrantless search and that all evidence discovered as a result of the illegal search should be suppressed as fruit of the poisonous tree. The Court agrees with Defendant's basic premise that "[u]nreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the [Fourth] Amendment." *Payton v. New York*, 445 U.S. 573, 585 (1980). However, there are several well-recognized exceptions that permit warrantless searches, and the search in question falls squarely into the inventory search exception.

Inventory searches performed "pursuant to standard police procedures are reasonable." *South Dakota v. Opperman*, 428 U.S. 364, 372 (1976). Police officers are permitted to use discretion in determining whether to impound and undergo inventory searches, so long as this discretion is "exercised according to standard criteria and on the basis of something other than

suspicion of evidence of criminal activity.” *Colorado v. Bertine*, 479 U.S. 367, 375 (1987). When inventory searches are performed pursuant to procedure and in keeping with the community caretaking functions of the police for the purposes of protecting the car owner’s personal property, protection of the police from claims over stolen property, and protecting police from potential danger, courts routinely uphold the searches. *Id.* at 372.

Detective Betts followed established Cocoa Beach Police Department Standard Operating Procedure when he decided to impound and then conducted an inventory search of the Mercedes. The Cocoa Beach Police Department’s Standard Operating Procedure states: “Vehicles may be towed under the following circumstances . . . [w]hen the driver of such vehicle is taken into custody by the police department and such vehicle would thereby be left unattended and all reasonable efforts to provide the vehicle driver with alternatives to impoundment have been unsuccessful or impractical due to time or staffing constraint.” (Doc. 48-2 at 3). Detective Betts testified that after taking the Defendant into custody, due to the late hour and the lack of available officers to protect the Mercedes, which would have been left in a high crime area, he in good faith decided to impound the vehicle both to protect the Mercedes and to protect the police from any claims from theft or damage that may have occurred as a result of leaving an expensive vehicle unattended overnight. Additionally, Detective Betts’ uncontroverted testimony reveals that Defendant’s roommate, whom Detective Betts had identified during the course of the investigation, had a suspended license and thus could not drive the car away from the lot even if she had been called. Thus, Detective Betts properly acted within his discretion and reasonably determined that any alternative to impoundment would be impractical.

The Cocoa Beach Police Department’s Standard Operating Procedure states that inventory searches “must” occur when vehicles are impounded and that “whenever possible, . . . conducted prior to the vehicle being removed from the scene.” (*Id.* at 4). After the tow truck was called, but before it arrived, Detective Betts undertook the required inventory search. He discovered the

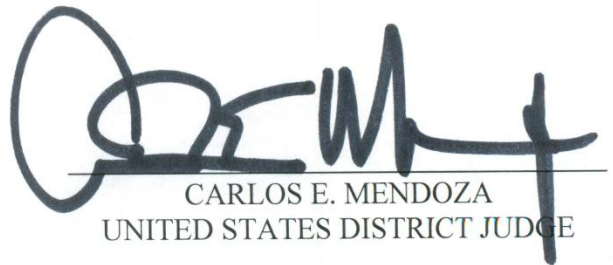
second cellphone during the inventory search, noted its existence on the property report provided to Defendant, replaced it, and later properly applied for a warrant to seize the phone. All of Detective Betts' actions took place using his reasonable discretion according to standard police procedure and in good faith. Thus, suppression of the cellphone and any evidence discovered from the cellphone is not warranted.

Defendant argues that because the search happened after Defendant was arrested and secured in a patrol car, the search was an illegal search incident to arrest. This argument misses the mark. Detective Betts' search of the Mercedes clearly qualifies as an inventory search performed after the acceptable decision to impound the vehicle, and not as a search incident to arrest.

III. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** that Defendant's Motion to Suppress (Doc. 35) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on December 20, 2018.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record